

E-203, 138/SA-95-470

ORDER DENYING INTERVENTION

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs
Tom Burton
Marshall Johnson
Dee Knaak
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Application of the
Alexandria Board of Public Works to Extend
its Assigned Service Area into the Area
Presently Served by Runestone Electric
Association

ISSUE DATE: October 16, 1995

DOCKET NO. E-203, 138/SA-95-470

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PROCEDURAL HISTORY

I. PROCEEDINGS TO DATE

On May 11, 1995, Alexandria Board of Public Works (Alexandria) petitioned the Commission pursuant to Minn. Stat. § 216B.44 (1994) to extend its assigned electric service area within its corporate boundaries to serve an area of approximately 51.5 acres, land which is within the assigned service territory of Runestone Electric Association (Runestone). Alexandria stated that its compensation offers have been rejected by Runestone.

On June 9, 1995, the Minnesota Department of Public Service (the Department) filed comments recommending that the matter be referred to the Office of Administrative Hearings (OAH).

On June 14, 1995, Runestone responded to Alexandria's petition asserting that the petition failed to include indispensable parties (Cooperative Power Association and its member cooperatives) and that its facilities cannot be transferred without the approval of the Rural Utilities Services.

On June 19, 1995, Cooperative Power Association (CPA) and its 16 member cooperatives filed a Joint Petition to Intervene. The petition requested an Order allowing the petition to intervene and naming the joint petitioners as parties (with all the rights pertinent thereto) in the Commission's Notice and Order for Hearing.

On June 27, 1995, Alexandria filed an objection to the Joint Petition to Intervene.

On June 29, 1995, the Commission met to consider this matter. After hearing oral argument, the Commission tabled the matter pending receipt of a brief from legal counsel on whether the joint petitioners had standing to intervene in this case.

On September 28, 1995, the Commission met to consider this matter.

FINDINGS AND CONCLUSIONS

II. FOCUS OF THIS ORDER

This Order addresses the Joint Petition to Intervene in this matter. In a separate NOTICE AND ORDER FOR HEARING issued contemporaneously with this Order, the Commission orders that a contested case proceeding shall be held to determine the compensation due Runestone for Alexandria's acquisition of a portion of Runestone's assigned service territory.

III. JOINT PETITION TO INTERVENE

In the Joint Petition, CPA described itself as a wholesale supplier of electric power and energy to its 17-member non-profit rural electric distribution cooperatives. CPA stated that its fixed costs for the generation and transmission system are recovered through its wholesale sales to its member cooperatives. CPA noted that Runestone is one of the 17 member cooperatives who purchase their electric power and energy requirements from CPA and provide electric service at retail to their members.

CPA argued that it is threatened with the loss of wholesale sales and corresponding revenues because Runestone, one of its member cooperatives, will lose customers due to Alexandria's expansion into Runestone service territory.

For their part, CPA's member cooperatives argued that they are threatened with higher rates because CPA will need to raise the rates they charge their member cooperatives in order to recoup the loss it will experience due to the loss of revenue from Runestone.

The Joint Petitioners stated that they sought intervention in this case to receive compensation for their loss.

III. APPLICABLE STATUTES

The statutes governing this issue are Minn. Stat. §§ 216B.44 (1994) and 216B.38, subd. 5 (1994). The first statute, Minn. Stat. §§ 216B.44 (1994), states in pertinent part:

The municipality acquiring the facilities shall pay to the *electric utility formerly serving the area* the appropriate value of its properties within the area....
[Emphasis added.]

The second statute, Minn. Stat. § 216B.44 (1994), defines *electric utility* as follows:

“Electric utility” means persons...maintaining or controlling in Minnesota equipment or facilities for providing electric service *at retail* and which fall within the definition of “public utility” in section 216B.02, subdivision 4, and includes facilities owned by a municipality or by a cooperative electric association. [Emphasis added.]

IV. COMMISSION ANALYSIS

The two cited statutes provide that compensation can be granted only to entities that 1) provide electric service *at retail* and 2) formerly *served* the annexed area. Runestone is the only cooperative that meets both requirements.

A. Joint Petitioners’ Arguments

In their petition, the joint petitioners first argued that the phrase “other appropriate factors” appearing in Minn. Stat. § 216B.44 (1994) refers to their losses. This phrase, they argued, authorizes the Commission to find that they (CPA and its 16 member cooperatives) may be compensated. As such, they argued, they may properly intervene in this matter.

The Joint Petitioners argued that it is especially appropriate to consider the economic loss suffered by the petitioners as an “other appropriate factor” because energy providers with a different organizational structure (i.e. entities whose operations include both generation and distribution of electricity) would be entitled to the compensation that Petitioners seek. The Petitioners suggest that it would be unfair to treat the CPA-Runestone relationship differently than it treats the relationship between the generation and distribution divisions of one of the investor-owned electric utilities, such as Northern States Power Company (NSP).

The petitioners’ argument fails because there are real, substantial distinctions between NSP and CPA/Runestone that the statute clearly recognizes. NSP is one legal entity and provides electricity “at retail” whereas the CPA/Runestone “relationship” involves two separate legal entities: Runestone (which provides electricity at retail) and CPA (which sells it to Runestone at wholesale). In short, the petitioners improperly disregard the legal line between CPA and its member coops and seek to treat them as one entity for purposes of this case and this statute alone.¹

In addition, the Commission does not agree with the petitioners’ interpretation of the phrase

¹ The result in this case does not turn on a difference in ownership structure (cooperative vs. investor owned) as suggested by the Joint Petitioners. Cooperatives that perform both generation and distribution functions and sell “at retail” would be entitled to compensation for both functions. At the same time, an investor-owned utility that performed only distribution function and purchased its electricity from another entity “at wholesale” would be entitled to compensation under Minn. Stat. § 216B.44 (1944) if territory it served “at retail” was acquired, while its supplier would not.

“other appropriate factors”. The phrase does not create (as the Joint Petitioners suggest) a new category of potentially compensated parties. Instead, it simply points to the existence of other “factors” that can be used in determining compensation for the electric utility that (unlike the Joint Petitioners) formerly served the annexed area.

B. CPA’s Argument

At oral argument, CPA argued that it should have the opportunity to introduce evidence and develop the record in this matter to help the Commission construe the statutes properly. Specifically, the CPA stated that it wanted to show the relationship between Runestone and the 16 cooperatives and the common losses to be experienced by the related cooperatives.

The Commission does not agree that development of the record is necessary as the basis for applying these statutes. The statutes clearly and unambiguously restrict the definition of an electric utility to retail providers. As a wholesale provider, CPA is not included in this definition. In addition, it is Runestone and not CPA that served the annexed area. In these circumstances, it is unnecessary and would be inappropriate to allow CPA to intervene to develop the record.

C. Runestone’s Argument

At oral argument, Runestone argued that CPA provides electric service “at retail” within the meaning of Minn. Stat. § 216B.38, subd. 5 (1994) because it maintains equipment used to provide electricity that is *ultimately* sold at retail.

Runestone’s argument fails because it ignores the distinction between wholesale and retail that the statute clearly recognizes. Refusing to give effect to the plain meaning of the term “at retail” and the distinction between retail and wholesale that it implies is not permitted. In essence, Runestone’s interpretation either adds words to the statute or removes some. To have the meaning sought by Runestone, the statute would have to be substantially amended. In short, Runestone’s proposed interpretation is unreasonable and will be rejected.

To conclude, the Commission finds that the statutes governing this issue do not provide for compensation to either the wholesale supplier (CPA) or to retail cooperatives that have not served the annexed area. There is no Commission precedent to the contrary.

V. COMMISSION ACTION

Based on the foregoing analysis, the Commission will deny the Joint Petition to Intervene.

ORDER

1. The Joint Petition to Intervene filed by Cooperative Power Association (CPA) and 16 of its member rural electric distribution cooperatives is denied.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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